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MOHD. YUSUF ZAIDIN

v.

HJ. MALAI MASHOR GENERAL CONTRACTOR

*b*HIGH COURT, BRUNEI
DENYS ROBERTS CJ
[CIVIL SUIT NO. 113 OF 1990]
14 SEPTEMBER 1991*c*

TORT: *Personal injury - Road accident - Apportionment of liability - Speed limit - Entering junction from main road - Whether main road open to public - Duty of driver - Whether distractions - Sketch plans and photographs - Right of way - Proper look out - Contributory negligence.*

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An accident occurred between a car driven by the plaintiff and a truck belonging to defendants. Apart from the damages being claimed by the plaintiff in his personal capacity, the main sufferer was the plaintiff's son, a boy aged 10, who sustained injuries in the collision, as a result of which he died.

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There was a serious dispute as to the liability for the accident as it was contended by the plaintiff that he had the right of way, that the lorry driven by the defendant should have ensured that the main road was clear before entering it, and that the truck driver failed to do so and ran into him.

The defence contended that the main road on which the plaintiff was driving was not open to the public, that the plaintiff was travelling very fast, that the road was blocked by drums which forced the plaintiff to move from the inside lane into the outside lane, that the collision with the truck and the car occurred in the outside lane and that the plaintiff had failed to keep a proper lookout.

*f***Held:**

[1] If the plaintiff was travelling at about 50 mph at the time of accident and had slowed his car to avoid the collision, which he had admitted he did, he must have been exceeding the speed limit when driving along the main road and when he reached the junction. This factor contributed towards the accident.

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[2] The Court accepted the evidence of PW1, PW2 and PW4 and found that the drums did not obstruct either lane of the road leading toward Tutong and that at the time of the accident they were present as shown in the police plan. The degree of obstruction which they may have caused to the inside lane of the main road was a small one and would not have forced a driver to veer into the outside lane.

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[3] The evidence suggests that the main road was *de facto* used by members of the public and that drivers on it acted as if the road was open. It is perhaps of some significance, that the driver of the truck appears to have behaved as if the road was open. The main road was open in practice to use by members of the public at the time of the accident, and it was reasonable for both drivers of car and truck to assume that it was.

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[4] The main responsibility for the accident must inevitably lie with the driver of the lorry, who was in error in attempting to cross the main road before he was satisfied that there was nothing coming from either direction, which could possibly collide with the truck which he was driving. He either misjudged the speed of the car or he did not see it, although on PW1's evidence it must have been visible to him. If the driver of the car saw the lorry approaching the junction, the driver of the lorry should have seen the car.

[5] A vehicle coming from the side road is not entitled to assume that every car will stop at the stop sign in order to let it pass. If a vehicle is on a side road, it must wait until the main road is clear. This duty does not alter, whatever the cars do on the main road. **a**

[6] In view of the slight damage to the left front of the lorry and the serious damage to the mid and back outside sections of the car, the plaintiff must have veered to his left. The blow which the lorry struck was no more than a glancing one. Thus the collision must have occurred fairly close to the brake marks which were near the broken line separating the two lanes of the main road going towards Tutong. It is probable that the car driven by the plaintiff, though mainly in the inside lane, was also to some extent in the outside lane. **b**

[7] The plaintiff did not keep a proper lookout when he entered the junction. He assumed that as he had a right of way, he made no effort to look carefully in all directions and ensure that it was safe for him to cross the road junction. He had therefore failed in his duty. **c**

[8] In these circumstances, the lorry driver was 75% to blame and the car driver was 25% to blame.

[Order accordingly; costs to the plaintiff.]

For the plaintiff - David Clidero, (Ang Poh Chi with him); M/s. Clidero & Lee
For the defendants - Andrew Ong; M/s. Choo, Chan & Wong

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JUDGMENT

Denys Roberts CJ:

Preliminary

This claim arises from an unfortunate accident which occurred at about 9.30 am on 28 January 1990, between a red car No. KE 2681 driven by the plaintiff along Jalan Baru Anduki in the direction of Bandar Sri Begawan and a garbage truck, No. KE 2867. The truck, which had been to a garbage dump along Kawasan Simpang 4, was driven by Mulkah Raj, who died some months later in circumstances not connected with this accident. **e**

In the collision which occurred, apart from damages which are claimed by the plaintiff in his personal capacity, the main sufferer was the plaintiff's son, a boy aged 10, who sustained injuries in the collision as a result of which he died soon afterwards in Panaga Hospital. **f**

Letters of administration were granted on 19 June 1990, to the plaintiff by the probate officer over the estate of the deceased boy, Muhammad Asrin bin Md Yusof.

It is not disputed that an accident took place at the time and place alleged in the statement of claim and that, as the result of the accident, the boy suffered injuries from which he later died. **g**

There is however, a serious dispute between the parties as to the liability for this accident. It could be said, in summary that the plaintiff's case is that he had the right of way, that the lorry driven by the defendant should have ensured that the main road was clear before entering it, and that the truck driver failed to do so and ran into him. **h**

The defence is that the main road on which the plaintiff was driving was not open to public, that the plaintiff was going very fast, that the road was blocked by drums which forced the plaintiff to move from the inside lane into the outside lane, that the collision between the truck and the car occurred in the outside lane and that the plaintiff failed to keep a proper lookout. **i**

a *Speed*

The plaintiff (PW1) gave evidence that there was a speed limit of 80 kph (50 mph) along the main road from Kuala Belait/Seria toward Tutong. This was confirmed by Abdul Khahur bin Hj Tamit (PW3).

b

The plaintiff said that he was travelling at about 50 mph before he reached the junction and that at the moment of collision he was going at about 45 mph. He slowed his car before the collision and looked ahead. He did not agree that at the moment of the collision he was driving much faster than 45, though he could have been going a bit more, say at 50.

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If he was travelling at about 50 at the time of the accident and had slowed his car to avoid the collision, which he had admitted he did, he must have been exceeding the speed limit when driving along the main road and when he reached the junction. This factor would, in my view, contribute towards the accident, though it was not the main reason for it.

Drums**d**

The plaintiff (PW1) testified that the road was not obstructed by the drums. This evidence was corroborated by his wife (PW2). A police officer, Sgt 825 (PW4) drew a sketch plan of the site of the accident at about 10.07 a.m on 28 January 1990, that is to say a little over half an hour after it occurred. According to him, there were three drums upright at the side of the road which he showed in his sketch plan. The fair copy of his rough sketch was produced in evidence. It also shows the drums as upright on the side of the main road.

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However, Md Khalid bin Ahmad (DW1) gave different evidence. According to him, the photographs which he took of the site of the collision about 7.30 a.m. on the following morning, 29 January, show that the drums and a 'No Entry' sign were scattered about the main road, mainly in the route taken by the plaintiff. According to the latter, and to the police officer (PW4), the drums were not there on the morning of 28 January.

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Md Farruquzzaman Sarder (DW2) seemed to have difficulty in understanding the sketch plan of the area and the photographs of it. I make allowances for this in considering the evidence which he gave. In examination in chief he said that he saw no drums on the road at A to C (which is the nearside lane going toward Tutong). He added that the road was clear but that there were 3 drums on one side of the main road and 2 on the other. In cross examination he said there were drums but that he was not sure where they were. He was then shown the photographs which had been taken by DW1 and said that the drums were like those shown in those pictures at the time of the accident.

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Nisar Ahmad (DW3) was, like DW2, a passenger in the garbage truck, sitting in the front seat. He said that there were some drums on the road though they were on the side of the road. He explained that he meant that the drums were on the road itself. When shown photographs taken by DW1, however, he said that those photos, which show drums on the road were in accordance with where the drums were at the time of the accident. He later said that the drums were on the both sides of the road and that the cars were driving between them.

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I have to reach a finding as to where these drums were on the morning of the accident. I have the evidence of the plaintiff, his wife and the police officer on one side and two passengers in the garbage truck on the other. It may be that somebody, and we have not been able to discover whom, replaced the drums across the two lanes of traffic going toward Tutong at sometime between 27th and 28th. But I have to try to determine where the drums were, and if they were obstructing the road, at the time of the accident.

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I accept the evidence of PW1, PW2 and PW4 on this matter and find that the drums did not obstruct either lane of the road leading toward Tutong and that at the time of the accident they were present as shown in the police plan. The degree of obstruction which they may have caused to the inside lane of the main road was a small one and would not have forced a driver to veer into the outside lane.

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Was the road open?

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It has been argued by the defence that the main road on which the plaintiff travelled was not open to the public. The police officer (PW4) said the road was open to the public at the time and that other people used the road. The plaintiff, when he was asked about this, replied that at the time of the accident there were many users of the road and that it was open to cars.

The plaintiff added that if the road was not for public use it should have been fenced off. He saw no signs saying that the road could not be used. I would be interested to know whether or not there were any signs, saying that the road was not open, further back toward Seria. I have had no evidence of this and I must assume that the road appeared to be open to a reasonable driver. It was in fact used by a number of drivers, as appears from the photographs which were taken on 28 and 29 January 1990.

c

Several of those photographs show cars going either towards Kuala Belait or coming from that direction. Neither DW2 nor DW3 suggested that the road was closed at the time of the accident.

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Haji Sulaiman bin Munchid (DW4), however, said that he often travelled along the main road from Tutong in January 1990 but that he turned off the main road onto the Anduki side road each day, because the main road to and from Kuala Belait was closed. It is however, to be observed that, although there was on 29 January a notice, on the left just before the turn to the dumping site, pointing toward Kuala Belait and Seria, there was nothing which blocked off the Kuala Belait road itself and no sign to tell motorists not to use it. DW4, although he often travelled to Anduki, did not seem to know when the road was opened to the public.

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Such evidence as I have, suggests that the road was *de facto* used by members of the public and that drivers on it acted as if the road was open. It is perhaps of some significance, which I shall come to in a moment, that the driver of the truck appears to have behaved as if the road was open. I find that the main road was open in practice to use by members of the public at the time of the accident, and that it was reasonable for both drivers of car and truck to assume that it was.

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Right of Way

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Where was the right way? Did it lie with the car or with the lorry? The Highway Code, according to PW3, is not complete and can only be regarded as a guide. However, PW3 said that, although the Highway Code is not complete, he thought that the Malaysian Code accurately reproduces the position as it is in Brunei.

The Malaysian version, which is in Malay and English, states that when approaching a junction with a major road a driver must slow down gradually and give way to traffic on the main road. Where there is a stop sign he must stop at it. This is surely good sense. If a motorist is approaching a main road he must give priority to any vehicle on it. He must be sure that the main road is clear before he ventures into it, whether he is turning to the left, whether he is going straight ahead or whether he intends to turn to the right.

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- a* Both DW2 and DW3 say that the garbage truck driver stopped at the junction and looked right and left before he went ahead. DW2 did not see the red car at the junction but only when it was quite close. DW3 also did not notice it at the junction and saw it only at the moment of collision. I do not think that the driver of the truck could have seen the car as a danger before he moved into the highway. He either misjudged its speed or he did not see it, although on PW1's evidence it must have been visible to him.

b ***The Lane***

Whether the plaintiff travelled in lane A to C on the sketch plan (the inside lane) or in lane B to D (the outside lane) has been the subject of disagreement between the parties, since the rules governing vehicles on these lanes are said to differ. On the outside lane was an arrow with two heads, pointing to Tutong and to the right.

- c* For the defence it is said that a car travelling in the inside lane can proceed without stopping but that a vehicle which uses the outside lane must obey the stop sign and white line and halt, even if it intends to go straight ahead to Tutong.

The implication of this is that, if a driver does not do so, this relieves a truck coming from a side road onto the main road from its obligation to give way to a vehicle on the main road.

- d* I do not think that this is so. I consider that a vehicle entering from a side road is not entitled to assume that a car on the main road approaching the stop sign is both intending to go straight ahead and will stop. Unusual though such a rule might seem, both the police officer (PW4) and the vehicle inspector (PW3) were of the opinion that, if a car in the outside lane intended to drive straight ahead, the driver could ignore the stop sign and the white line, and that it was only if a driver intends to turn to the right that he must obey them.

- e* Even if these opinions are not correct, a car travelling to Tutong would in any event make no more than a momentary stop before it went ahead. A vehicle coming from the side road is not entitled to assume that every car will stop at the stop sign in order to let it pass. If a vehicle is on a side road, it must wait until the main road is clear. This duty does not alter, whatever the cars do on the main road.

f ***Point of Impact***

PW1 and PW2 both marked a plan that was put to them to the effect that the collision occurred roughly in the middle of the inside lane. The brake marks on the road, which were identified by DW2, stop slightly short of the broken line separating the two lanes going towards Tutong.

- g* I find that the end of the brake marks is about where the collision occurred. It would be normal for the driver of the car, at the last minute, to attempt to avoid the collision by pulling to his left. The plaintiff does not say that he did this. According to him, the only action which he took was to slow his speed. However, in view of the slight damage to the left front of the lorry and the serious damage to the mid and back outside sections of the car, he must have veered to his left. The blow which the lorry struck was no more than a glancing one. Thus the collision must have occurred fairly close to the broken line separating the two lanes of the main road going towards Tutong. It is probable that the red car, driven by the plaintiff, though mainly in the inside lane, was also to some extent in the outside lane.

I do not consider that the drums forced him into the outside lane. I find that he drove mainly in the inside lane, though it does not seem to me to matter, the road ahead being clear.

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Generally

Did the lorry driver make sure that it was safe to come from the side road onto the main road? So far as I know, it was a clear day, there was no evidence of rain or mist, and there was a good view to the left. Photographs are often misleading but the suggestion from them is that there is nothing to obstruct the view of a car coming from Kuala Belait for a considerable distance before the junction. Although DW2 and DW3 did not see any red car until the accident or shortly before it, the plaintiff insists that he did see the truck, in the distance approaching the junction along the side road, though he did not see it again.

The main responsibility for this accident must inevitably lie with the driver of the lorry, who was in error in attempting to cross the main road before he was satisfied that nothing was coming from either direction which could possibly collide with the truck which he was driving.

The red car could have contributed to the accident if it was driven at such a speed that the lorry driver saw nothing at the side road. Although I have found that the red car was being driven above the speed limit before it entered the junction, there is no evidence that it was driven at a speed substantially in excess of that which was allowed. There could also be contributory negligence, on the part of the driver of the car, if he was not keeping a proper lookout, as I do not think he was.

The plaintiff's own evidence is that he saw a lorry approaching the junction but did not see it again until just before the collision. He is either mistaken in his recollection of what took place or he was not keeping a proper lookout. I find as a fact that he did not keep a proper lookout, when he entered the junction. He assumed that as he had a right of way he need make no effort to look carefully in all directions and ensure that it was safe for him to cross the road junction.

I think that the lorry driver was negligent in driving onto the main road when it was not safe to do so. He either misjudged the speed of the red car or failed to see it. If the driver of the red car saw the lorry approaching the junction, the driver of the lorry should have seen the car.

I decide that the lorry driver did see the car and took the chance of being able to cross the main road before the car arrived at the junction. The red car was nearer, and was coming faster, than he calculated, so that a collision occurred between them, when the truck was two thirds of the way toward the Anduki side road.

The driver of a car approaching a junction, and on the main road, is not entitled to assume that, because he has a right of way, he need do nothing. He must keep a proper lookout and drive at a reasonable speed across the junction. I think that the plaintiff failed in this duty.

In these circumstances, though it is never easy to apportion blame long after an accident occurs, I think that the lorry driver was 75% to blame and that the car driver was 25% to blame.

I award costs to the plaintiff on his claim. Costs to be taxed if not agreed.

Quantum of damages to be referred to Chief Registrar.

Also found at [1991] 3 CLJ 2965

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